

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MELINDA SCOTT,

Appellant,

v.

WISE COUNTY DEPARTMENT OF
SOCIAL SERVICES, *et al.*,

Appellees.

4th Cir. Case No. 21-2006

Va. W.D. Case No. 2:20-cv-14

**APPELLEE JOSHUA MOON'S
MOTION FOR AWARD OF FEES**

NOW COMES Joshua Moon, by and through undersigned counsel, and moves for an award of attorney's fees pursuant to Fed. R. App. 38. In support of this Motion, Mr. Moon states as follows:

1. This case represents Ms. Scott's sixth attempt to sue Mr. Moon for the same underlying activities. As the District Court noted, it is at least her third attempt to do so in federal court (and this appeal represents her third appeal to this Court). Ms. Scott has repeatedly been informed that she has no cause of action, yet she persists in litigation with improper motives and in bad faith attempts to escalate costs for Mr. Moon.
2. Ms. Scott has, as noted by Mr. Moon in two separate Motions to Dismiss the instant appeal(s), flagrantly ignored the rules for in forma pauperis litigants.

The District Court has already determined that this appeal was not taken in good faith.

3. Mr. Moon has separately moved for an award of attorney's fees and costs in the District Court under the Bad Faith Exception to the American Rule.

Declarations in support of that motion illustrate that the Plaintiff continues the instant litigation for patently improper and frivolous motivations.

4. In an effort to contain costs and minimize the burden on this Court, Mr.

Moon attaches a declaration setting forth Ms. Scott's behavior to date in this litigation. See Exhibit 1. That declaration, in turn, includes as exhibits two declarations previously filed with the District Court. Mr. Moon also attaches here and incorporates by reference herein his District Court Motion seeking fees under the Bad Faith Exception to the American Rule. See Exhibit 2. All of the arguments that Mr. Moon made setting forth Ms. Scott's Bad Faith in the District Court are equally applicable to illustrate that that her appeal to this Court is frivolous and taken in bad faith.

5. Attached to this Motion as Exhibit 3 is a declaration of undersigned counsel.

Undersigned counsel has spent 6.4 hours on this appeal to date, to include 5.2 hours on the Appellee's informal merits brief. Mr. Moon requests an award in the amount of \$1920 (reflecting an hourly rate of \$300) be issued.

Mr. Moon further requests leave to supplement this Motion should costs

escalate further due to future frivolous filings, to include future motions practice.

6. Under Fed. R. App. P. 38, and under *Foley v. Fix* , 106 F.3d 556 (4th Cir. 1997) and its progeny, an award of fees to Mr. Moon is justified and warranted in this case.

WHEREFORE, Mr. Moon requests that this Court award him his attorney's fees, or alternatively order Ms. Scott to show cause why the instant appeal was not frivolous in nature.

Respectfully submitted this the 12th day of November, 2021,

JOSHUA MOON

By Counsel:

/s/Matthew D. Hardin

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Certificate of Service

I hereby certify that I will file a true and correct copy of the foregoing document with the Court's CM/ECF system, which will electronically serve counsel of record. I will also deposit a true and correct copy of the foregoing document into the U.S. Mail, with First Class postage prepaid, directed to:

Melinda Scott
2014PMB87
Post Office Box 1133
Richmond, VA 23218

I will further send a copy of the foregoing to Ms. Scott by email addressed to msscottw@masonlive.gmu.edu.

Dated: November 12, 2021

/s/Matthew D. Hardin
Matthew D. Hardin
Counsel for Joshua Moon

Certificate of Compliance

I hereby certify, pursuant to Fed. R. App. P. 32 (g), that this Motion complies with the type volume limitation. It is, exclusive of the items listed in Fed. R. App. P. 32 (f), 463 words in length. I have relied upon Microsoft Word's word processor to establish that count.

Dated: November 12, 2021

/s/Matthew D. Hardin
Matthew D. Hardin
Counsel for Joshua Moon